

94TH CONGRESS  
2D SESSION

**S. 3379**

[2418, 3483]

IN THE SENATE OF THE UNITED STATES

MAY 5, 1976

Mr. CHURCH (for himself, Mr. CLARK, and Mr. PEARSON) introduced the following bill; which was read twice and referred jointly to the Committees on Banking, Housing and Urban Affairs and Foreign Relations, and if and when reported to be referred to the Committee on Finance for not to exceed thirty days

**A BILL**

To require reporting and analysis of contributions, payments, and gifts made in the conduct of international business, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*  
3 That this Act may be cited as the "International Contribu-  
4 tions, Payments, and Gifts Disclosure Act".

5 FINDINGS AND PURPOSES

6 SEC. 2. (a) The Congress of the United States, after  
7 extensive examination of facts presented in public hearings,  
8 by the Securities and Exchange Commission and in public  
9 statements made by major United States companies and for-

1   eign governments, finds that certain United States based  
2   companies have made, and may continue to make contribu-  
3   tions, payments, or gifts or convey other benefits upon for-  
4   eign individuals, foreign governmental employees, foreign  
5   politicians, and foreign political entities, which may be illegal  
6   in the country where made or of a questionable nature and  
7   that when these payments are discovered and become pub-  
8   licly known they create substantial foreign policy problems  
9   for the United States. Specifically, these contributions, pay-  
10   ments, and gifts can allow, and in some instances have  
11   allowed, corporate interests to take precedence over United  
12   States foreign policy objectives and can create and foster an  
13   anti-American sentiment in individual foreign countries.

14       (b) Therefore, it is the purpose of the Congress of the  
15   United States to insure availability of adequate information  
16   about such payments to the Department of State and the  
17   Congress of the United States. To this end, the Department  
18   of State is charged with providing Congress with a compre-  
19   hensive review and analysis of such contributions, payments,  
20   and gifts and their foreign policy implications.

21       (c) The Congress of the United States also finds that  
22   certain contributions, payments, and gifts, which were made,  
23   and may continue to be made, have an adverse impact on  
24   the long- and short-term operations of United States busi-

1 ness abroad. The payments have had detrimental effects  
2 on the "investment climate" for some United States based  
3 corporations in certain countries, resulting in threats or  
4 actual expropriation, halting compensation for corporate  
5 property previously expropriated, cancellation of invest-  
6 ment contracts and concessions, loss of prospective sales  
7 in a country, and damage to the reputation of United States  
8 based corporations. These payments, therefore, are damag-  
9 ing to United States foreign economic policy objectives.  
10 Furthermore, certain contributions, payments, and gifts were  
11 made for the purpose of acquiring an unfair competitive  
12 advantage over either United States or foreign companies.  
13 As such, they are antithetical to the United States foreign  
14 economic policy objective of open, nondiscriminatory world  
15 trade and are acts in restraint of trade and unfair methods of  
16 competition. In a number of cases, the boards of directors of  
17 the corporations making such payments were not notified  
18 of such contributions, payments, and gifts; in no case were  
19 shareholders or the investing public informed.

20 (d) Therefore, it is the purpose of Congress to insure  
21 availability of adequate information to the boards of directors  
22 of corporations and to existing and potential investors. To  
23 this end, mechanisms are established to insure discovery of  
24 such information during the audit process and its transmittal

1 to the board of directors and shareholders. The Securities  
2 and Exchange Commission is charged with collecting and  
3 providing such information to the investing public.

4 (e) The Congress of the United States also finds that  
5 contributions, payments, and gifts, illegal either under United  
6 States law or under foreign law are being used to reduce  
7 United States tax liability. Therefore, it is the purpose of  
8 Congress to insure the nondeductibility of such contributions,  
9 payments, and gifts.

10 (f) Finally, the Congress of the United States realizes  
11 that such practices by corporations also must be dealt with  
12 on an international scale. Provisions of this Act are designed  
13 to encourage the President of the United States to seek per-  
14 tinent international agreements.

15 PAYMENTS TO FOREIGN PERSONS

16 SEC. 3. Subsection (a) of section 3 of the Securities  
17 Exchange Act of 1934 (15 U.S.C. 78c(a) ) is amended, by  
18 adding at the end thereof, the following new paragraphs:

19 "(40) The term 'agent' when used in the context  
20 of payments to foreign persons by a company subject to  
21 the reporting requirements of this title, means any per-  
22 son retained or employed by such company to perform  
23 such services on behalf of the company as the Commis-  
24 sion may, by rule, define, including, but not limited to,  
25 promoting, selling, soliciting, or securing indications of

1 interest for any product or service produced, sold, dis-  
2 tributed, or performed by that company or any of its  
3 subsidiaries or affiliates.

4 “(4) The term ‘foreign government’ means the  
5 government of a country other than the United States,  
6 any political or local subdivision thereof, any agency or  
7 instrumentality of such a government or subdivision,  
8 and any politician, political party, or political associa-  
9 tion within a foreign country.”.

10 SEC. 4. Subsection (a) of section 13 of the Securities  
11 Exchange Act of 1934 (15 U.S.C. 78m(a)) is amended,  
12 by adding after paragraph 2 thereof, the following new para-  
13 graphs:

14 “(3) a sworn disclosure statement containing such  
15 information and documents (and such copies thereof),  
16 certified by independent public accountants, as the Com-  
17 mission shall deem necessary or appropriate to provide  
18 a complete accounting of any offer or agreement of any  
19 agent or employee of a company or its parent, to make  
20 any contribution, pay any fee, or give anything of sig-  
21 nificant value in connection with—

22 “(A) direct and indirect political contributions  
23 to foreign governments;

24 “(B) direct and indirect payments and gifts to  
25 employees of foreign governments which are in-

1           tended to influence the decisions of such employees  
2           and which are made either with or without the  
3           consent of their sovereign; and

4           “(C) direct and indirect payments and gifts to  
5           employees of foreign, nongovernmental purchasers  
6           and sellers which are intended to influence normal  
7           commercial decisions of their employer and which  
8           are made without the employer's knowledge or  
9           consent.

10          “(4) the disclosure statement required to be filed  
11          by paragraph (3) above shall be filed annually and  
12          shall include—

13               “(A) the name and address of each person  
14               who made such contributions, payment, or gift;

15               “(B) the date and amount of such contribu-  
16               tion, payment, or gift;

17               “(C) the name and address of each recipient  
18               and beneficiary, direct and indirect, of each con-  
19               tribution, payment, or gift;

20               “(D) a description of the purpose for which  
21               such contribution, payment, or gift was furnished;

22               “(E) a statement whether the contribution,  
23               payment, or gift was legal where made;

24               “(F) identification of relevant foreign law

1           when foreign law prevents filing information re-  
2           quired by this Act, as stated in paragraphs (8) and  
3           (9) ; and

4           “(G) such other information as the Securities  
5           and Exchange Commission may by rule or regula-  
6           tion require as necessary or appropriate in further-  
7           ance of the purposes of the International Contribu-  
8           tions, Payments, and Gifts Disclosure Act.

9           “(5) any company making contributions, pay-  
10          ments, and gifts reported pursuant to paragraph (3)  
11          shall maintain related books and records for not less than  
12          five years.

13          “(6) no such contribution, payment, or gift may be  
14          made in connection with any transaction described in  
15          paragraph (3) through or by any agent or other person  
16          who has not first agreed to maintain, for not less than  
17          five years, copies of such books and records in the United  
18          States or to make available upon request by the company  
19          such books and records relevant to said company to show  
20          the ultimate recipient of each such contribution, pay-  
21          ment, or gift, whether furnished to such ultimate re-  
22          cipient directly or through another agent, subagent, or  
23          other intermediary.

24          “(7) the Securities and Exchange Commission shall

1 promulgate such rules and regulations as it may deem  
2 necessary to carry out the provisions of the International  
3 Contributions, Payments, and Gifts Act.

4 “(8) whoever, unless prevented by foreign law,  
5 (a) knowingly fails to file a statement required by this  
6 section, (b) knowingly files a false statement, or (c)  
7 knowingly fails to obtain from any agent all information  
8 required for any disclosure statement under paragraph 3  
9 of this Act, shall, upon conviction, be fined not more than  
10 \$25,000 and imprisoned for not less than one month and  
11 not more than two years.

12 “(9) any person who signed the disclosure state-  
13 ment required by paragraph 3, any person who is a  
14 director of or partner in the company required to file such  
15 disclosure statement and any other person who, with his  
16 consent, has been named as having prepared or certified  
17 any part of such disclosure statement, or as having  
18 prepared or certified any statement or evaluation used  
19 in connection with the disclosure statement and who,  
20 unless prevented by foreign law, (a) knowingly fails  
21 to file a statement, (b) knowingly fails to obtain infor-  
22 mation required by this subsection, or (c) knowingly  
23 files a false statement, shall, upon conviction, be fined not  
24 more than \$25,000 and imprisoned for not less than  
25 one month and not more than two years.



1           “(10) all information provided pursuant to para-  
2 graph 3 above shall be made available to the public  
3 unless the President determines public disclosure will  
4 severely impair the conduct of United States foreign  
5 policy. If the President makes this determination, this  
6 information shall be placed in a separate report and  
7 submitted to the Committee on Foreign Relations of  
8 the Senate and the International Relations Committee of  
9 the House. The fact that information has been deleted  
10 from the public record shall be noted on the public  
11 record.”.

#### 12           FOREIGN POLICY ANALYSIS

13       SEC. 5. (a) The Secretary of State shall provide  
14 annually to the Committee on Foreign Relations of the  
15 Senate and the International Relations Committee of the  
16 House of Representatives a comprehensive review and for-  
17 eign policy analysis by country, concerning companies’—

18           (1) direct and indirect political contributions to  
19 foreign governments;

20           (2) direct and indirect payments and gifts to em-  
21 ployees of foreign governments which are intended to  
22 influence the decisions of such employees either with  
23 or without the consent of their sovereign; and

24           (3) direct and indirect payments and gifts to em-  
25 ployees of foreign, nongovernmental purchasers and sell-

1       ers which are intended to influence normal commercial  
2       decisions of their employer and which are made without  
3       the employer's knowledge or consent.

4       (b) The report required by paragraph (a) shall  
5       contain—

6               (1) the aggregate value of such contributions, pay-  
7       ments and gifts, if the total amount equals or exceeds a  
8       value determined by the Secretary of State as having  
9       significant foreign policy consequences, identification of  
10      the companies involved, and an analysis of foreign policy  
11      implications;

12             (2) a description and analysis of specific trans-  
13      actions whose effects are directly or indirectly detri-  
14      mental to the interests of the United States;

15             (3) a statement of whether the Department of State  
16      was aware of such contributions, payments, and gifts  
17      prior to their making; and

18             (4) such other information as the Secretary of State  
19      deems necessary to provide a complete analysis of the  
20      foreign policy implications for the United States of the  
21      transactions involved.

22       (c) The Secretary of State shall have access to all infor-  
23      mation from the Securities and Exchange Commission he de-  
24      termines is relevant to the formulation of this report. Further,

1 the Secretary of State may suggest to the Securities and  
2 Exchange Commission additional rules and regulations, for  
3 promulgation by the Securities and Exchange Commission,  
4 designed to obtain information for the Secretary's report.  
5 The Secretary of State may also request that the Securi-  
6 ties and Exchange Commission seek supplementary informa-  
7 tion to enable the Secretary to provide as complete a report  
8 as possible.

9 (d) Nothing shall prevent the Secretary of State from  
10 making more frequent reports or briefings, partial or com-  
11 plete, when deemed necessary by either the Secretary of  
12 State or the Committee on Foreign Relations of the Senate  
13 or the International Relations Committee of the House.

14 DISCLOSURE OF INFORMATION ON ANNUAL REPORTS TO

15 SHAREHOLDERS

16 SEC. 6. (a) Each company reporting pursuant to this  
17 Act shall disclose in its annual report--

18 (1) the aggregate values of contributions, pay-  
19 ments, and gifts reported under each of subparagraphs  
20 (A), (B), and (C) of paragraph 3 of section 13 (a) of  
21 the Securities and Exchange Commission Act of 1934,  
22 as amended above;

23 (2) a statement whether any of these payments,  
24 contributions, or gifts were illegal where made; and



1 cross references) is amended by adding at the end  
2 thereof the following new paragraph (5) :

“(5) For nondeductibility of illegal payments in computing earnings and profits of foreign corporations and DISCS, see section 162(c)(3) and section 998.”.

3 (2) Section 964(a) (relating to earnings and  
4 profits of controlled foreign corporations) is amended by  
5 adding after the words “section 312(m)(3)” and be-  
6 fore the first comma the following new words: “and  
7 section 162(c)(3)”.

8 (3) The table of sections for part IV of subchapter  
9 N is amended by adding at the end thereof the follow-  
10 ing new item:

“Sec. 998. Nondeductibility of illegal payments.”.

11 (d) EFFECTIVE DATE.—The amendments made by this  
12 Act shall apply to taxable years beginning after December  
13 31, 1976.

14 BOARD OF DIRECTORS, THE AUDIT COMMITTEE AND AUDITS

15 SEC. 8. (a) At least one-third, or three members, of  
16 each company's board of directors shall be composed of in-  
17 dependent outside directors—individuals having no direct or  
18 indirect financial ties with the company. These independent  
19 outside directors shall be elected by the shareholders.

20 (b) Among these responsibilities as full members of the  
21 board of directors, independent, outside board members shall

1 constitute the audit committee of the board. The audit com-  
2 mittee shall have the responsibility for initiating and pursuing  
3 internal investigations of company operations arising from  
4 this Act and may initiate and pursue other internal investiga-  
5 tions. It shall report the results of any investigation to the  
6 board of directors and at the audit committee's discretion, to  
7 the shareholders, the Securities and Exchange Commission,  
8 and other relevant bodies. The audit committee shall hire in-  
9 dependent auditors for the company and can hire counsel and  
10 other staff necessary to fulfill its responsibility. Those hired  
11 by the audit committee shall report to that committee.

12 (c) It is the responsibility of any independent auditor  
13 hired to inquire fully into any illegal, unusual, or questionable  
14 activities.

15 (d) Each member of the board of directors must pro-  
16 vide the independent auditors with a signed, sworn state-  
17 ment that (1) he knows of no illegal or unusual payment  
18 that has not been reported to the independent auditors nor  
19 of any books or records of the company whose existence is  
20 not known by the independent auditors, and (2) he has no  
21 knowledge of any irregularities in areas of the firm's business  
22 that are difficult to audit.

23 (e) Independent auditors shall have civil recourse for  
24 actual damage against persons or companies who withhold

1 or misrepresent information necessary for the auditor to carry  
2 out its responsibilities.

3 SHAREHOLDER'S RIGHT OF ACTION

4 SEC. 9. (a) Section 27 of the Securities Exchange Act  
5 of 1934 (15 U.S.C. 78aa) is amended, by designating  
6 existing section 27 as subsection (a) thereof, and adding, at  
7 the end thereof, the following new subsections:

8 “(b) Any person who can demonstrate actual damage  
9 in connection with the actual or proposed purchase or sale  
10 of any security or waste of assets resulting from—

11 “(1) the contributions, payments, or gifts described  
12 in the report required by paragraph 3 of subsection (a)  
13 of section 13 of the Securities Exchange Act of 1934  
14 (15 U.S.C. 78m (a) ) ; or

15 “(2) the failure of compliance with any part of the  
16 International Contributions, Payments, and Gifts Dis-  
17 closure Act or the rules and regulations thereof

18 may maintain an action, at law or in equity in accordance  
19 with subsection (a) of this section.

20 “(c) In the case of any successful action to enforce  
21 liabilities described in subsection (b) above, the court shall  
22 determine any liability for the costs of the action, and  
23 reasonable attorneys' fees.”.

1 PRIVATE RIGHT OF ACTION

2 SEC. 10. Any person who can establish actual damage  
3 to his business resulting from illegal (as determined by  
4 United States law or the laws of the country in which the  
5 contribution, payment, or gift was made) contributions,  
6 payments, or gifts, made by a competitor and who has not  
7 made such illegal payments himself in a relevant time period,  
8 may maintain a cause of action against that competitor and,  
9 if successful, can recover—

10 (a) treble the actual damage accruing to his busi-  
11 ness activity; and

12 (b) costs of the action and reasonable attorney's  
13 fees as determined by the court.

14 INTERNATIONAL EFFORTS

15 SEC. 11. (a) All efforts should be made by the Presi-  
16 dent to obtain international agreements in as many forums  
17 as appropriate concerning the reporting and exchange of  
18 this information and the establishment of international stand-  
19 ards and codes of conduct for the operations of companies.

20 (b) The President shall make all efforts to obtain in-  
21 ternational rules and regulations for international govern-  
22 ment procurement and sales.



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